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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,068	12/03/2003	Robert E. Cavanaugh	58895/P003US/10305848	5018
29053 7590 04/02/2007 DALLAS OFFICE OF FULBRIGHT & JAWORSKI L.L.P. 2200 ROSS AVENUE SUITE 2800 DALLAS, TX 75201-2784			EXAMINER TRUONG, THANHNGA B	
			ART UNIT	PAPER NUMBER
			2135	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/02/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/727,068	Applicant(s) CAVANAUGH, ROBERT E.	
	Examiner Thanhnga B. Truong	Art Unit 2135	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.--

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

*Thanhnga B. Truong*  
AU 2135

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/3/03; 1/27/05; 4/3/06</u> | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is responsive to the communication filed on December 03, 2003. Claims 1-43 are pending. At this time, claims 1-43 are rejected.

#### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) filed on December 3, 2003; January 27, 2005; and April 3, 2006. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-43 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

a. *Referring to claims 1, 13, 20, and 30:*

Claims 1, 13, 20, and 30 recite "a system, a computer program product, and a method for providing protection against malicious code." These claims are clearly directed toward a software program and they are non-statutory as not being tangibly embodied in a manner so as to be executable. Furthermore, the computer readable medium in claim 13 appears to include intangible media such as signals, carrier waves, transmissions optical waves, transmission media incapable of being touched or perceived absent the tangible medium through which they are conveyed. Therefore, claims 1, 13, 20, and 30 recite a non-statutory subject matter.

Claims 2-12, 14-19, 21-29, and 31-43 are depended on claims 1, 13, 20, and 30, respectively, thus they are rejected with the same rationale applied against claims 1, 13, 20, and 30 above.

#### ***Claim Rejections - 35 USC § 102***

Art Unit: 2135

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 3, 8-11, 13-14, 16-22, 26-34, 40-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Muttik (US 6,775,780 B1).

a. Referring to claim 1:

i. Muttik teaches a system for providing protection against malicious code (see Figure 2 of Muttik):

(1) a malicious code analyzer disposed in a communication system traffic pattern between an originator of an information communication of said communication system traffic pattern and an intended recipient of said information communication to intercept said information communication and to analyze said information communication for malicious code, said malicious code analyzer being configured to be transparent to systems of said communication system (see Figure 2, element 108 and column 1, line 65 through column 2, line 11 of Muttik).

b. Referring to claim 3:

i. Muttik further teaches:

(1) wherein said transparent configuration of said malicious code analyzer comprises: a translate function that monitors each packet provided to an interface of said system for packets to be provided malicious code analysis by said malicious code analyzer (column 1, lines 40-47; column 3, line 65 through column 4, line 11 of Muttik).

c. Referring to claim 8:

i. Muttik further teaches:

(1) wherein said malicious code analyzer comprises: code for virus scanning (**see Figure 2, element 108 and column 3, lines 55-56 of Muttik**).

d. Referring to claim 9:

i. Muttik further teaches:

(1) wherein said malicious code analyzer comprises: code for identifying unwanted or unsolicited messages (**column 3, lines 49-52 of Muttik**).

e. Referring to claim 10:

i. This claim has limitations that is similar to those of claim 3, thus it is rejected with the same rationale applied against claim 3 above.

f. Referring to claim 11:

i. Muttik further teaches:

(1) a communications throttle for determining if said information communication is to be passed by said system (**see Figure 2, element 212 and column 4, lines 8-11 of Muttik**).

g. Referring to claim 13:

i. This claim consist a computer program product having a computer readable medium having computer program logic recorded thereon for providing protection against malicious code to implement claims 1 and 10; thus it is rejected with the same rationale applied against claims 1 and 10 above.

h. Referring to claim 14:

i. This claim has limitations that is similar to those of claim 3, thus it is rejected with the same rationale applied against claim 3 above.

i. Referring to claims 16, 26:

i. These claims have limitations that is similar to those of claim 8, thus they are rejected with the same rationale applied against claim 8 above.

j. Referring to claims 17, 27:

i. These claims have limitations that is similar to those of claim 9, thus they are rejected with the same rationale applied against claim 9 above.

k. Referring to claims 18, 28:

i. These claims have limitations that is similar to those of claim 3, thus they are rejected with the same rationale applied against claim 3 above.

l. Referring to claims 19, 29:

i. These claims have limitations that is similar to those of claim 11, thus they are rejected with the same rationale applied against claim 11 above.

m. Referring to claim 20:

i. Muttik teaches a method for providing protection against malicious code (see Figure 2 of Muttik):

(1) intercepting packets in an information communication traffic pattern (**column 4, lines 59-64; column 5, lines 1-13 of Muttik**);

(2) steering said packets between interfaces associated with an information communication originator and said intended recipient, said steering providing detouring of at least a portion of said packets to a malicious code analyzer (**column 5, lines 14-27 of Muttik**); and

(3) analyzing said at least a portion of said packets by said malicious code analyzer before releasing said at least a portion of said packets back into said traffic pattern (**column 3, lines 54-57 of Muttik**).

n. Referring to claim 21:

i. This claim has limitations that is similar to those of claim 20, thus it is rejected with the same rationale applied against claim 20 above.

o. Referring to claim 22:

i. Muttik further teaches:

(1) wherein said protective system is disposed as a protected network edge device (**see Figure 1 and column 3, lines 22-53 of Muttik**).

p. Referring to claim 30:

Art Unit: 2135

i. This claim has limitations that is similar to those of claims 1, 3, and 10, thus it is rejected with the same rationale applied against claims 1, 3, and 10 above.

q. Referring to claims 31-34, 40-43:

i. These claims have limitations that is similar to those of claims 20-22 and 26-29, thus they are rejected with the same rationale applied against claims 20-22 and 26-29 above.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2, 4-7, 12, 15, 23-25, and 35-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muttik (US 6,775,780 B1), and further in view of Mathon et al (US 7,032,005 B2).

b. Referring to claim 2:

i. Although Muttik teaches a system for providing protection against malicious code (see Figure 2 of Muttik), Muttik is silent on the capability of not having a network address (e.g., zero footprint) associated therewith which is visible external to said system. On the other hand, Mathon teaches:

(1) wherein said transparent configuration of said malicious code analyzer comprises said malicious code analyzer not having a network address associated therewith which is visible external to said system (**column 7, lines 1-10 of Mathon**).

iii. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to:

(1) have modified the invention of Muttik with the teaching of Mathon to secure communication over the Internet (**column 1, lines 19-20 of Mathon**).

iv. The ordinary skilled person would have been motivated to:

(1) have modified the invention of Muttik with the teaching of Mathon to detect malicious software without requiring manual analysis of the software by a human expert, and without exposing the computer system to potentially malicious actions of the software (**column 1, lines 59-63 of Muttik**).

b. Referring to claim 4:

i. Muttik and Mathon further teaches:

(1) wherein said malicious code analyzer comprises: a proxy (column 7, line 3 of Mathon) for emulating a behavior of a destination of said information communication (**column 3, lines 54-65 and column 4, lines 17-24 of Muttik**).

c. Referring to claim 5:

i. The combination of teaching between Muttik and Mathon teaches the claimed subject matter. Mathon further teaches:

(1) wherein said transparent configuration of said malicious code analyzer renders said proxy invisible to devices coupled to said system (**column 7, lines 1-10 of Mathon**).

d. Referring to claim 6:

i. The combination of teaching between Muttik and Mathon teaches the claimed subject matter. Mathon further teaches:

(1) wherein said proxy comprises: server functionality; and client functionality (**column 7, line 3; column 3, line 7; column 9, lines 20-35 of Mathon**).

e. Referring to claim 7:

i. The combination of teaching between Muttik and Mathon teaches the claimed subject matter. Mathon further teaches:



(1) a loop back interface for interfacing said information communication with said malicious code analyzer (**column 1, lines 40-47 of Muttik; column 3, line 35 of Mathon**).

f. Referring to claim 12:

i. The combination of teaching between Muttik and Mathon teaches the claimed subject matter. Mathon further teaches:

(1) wherein said information communication conforms to a protocol selected from the group consisting of: simple mail transfer protocol (SMTP); post office protocol (POP); hypertext transfer protocol (HTTP); Internet message access protocol (IMAP); file transfer protocol (FTP); domain name service (DNS); hot standby router protocol (HSRP); open shortest path first (OSPF); and enhanced interior gateway routing protocol (EIGRP) (**column 7, line 32 of Mathon**).

g. Referring to claim 15:

i. This claim has limitations that is similar to those of claim 6, thus it is rejected with the same rationale applied against claim 6 above.

h. Referring to claim 23:

i. This claim has limitations that is similar to those of claim 5, thus it is rejected with the same rationale applied against claim 5 above.

i. Referring to claim 24:

i. This claim has limitations that is similar to those of claims 3 and 4, thus it is rejected with the same rationale applied against claims 3 and 4 above.

j. Referring to claim 25:

i. This claim has limitations that is similar to those of claim 6, thus it is rejected with the same rationale applied against claim 6 above.

k. Referring to claims 35-39:

i. These claims have limitations that is similar to those of claims 7 and 23-25, thus they are rejected with the same rationale applied against claims 7 and 23-25 above.

**Conclusion**

Art Unit: 2135

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Hoffman (US 6,732,279 B2) discloses anti-virus protection system and method(see title).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanhnga (Tanya) Truong whose telephone number is 571-272-3858.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached at 571-272-3859. The fax and phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2100.

TBT

March 30, 2007

*Thanhnga B. Truong*  
*AU 2135*